

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
CYRIL SHEPPARD,

Plaintiff,

-v-

DEPARTMENT OF CORRECTIONS *et al.*,

Defendants.
-----X

20 Civ. 9405 (JPC) (SDA)

ORDER ADOPTING
REPORT AND
RECOMMENDATION

JOHN P. CRONAN, United States District Judge:

Plaintiff Cyril Sheppard, proceeding *pro se*, brings this action pursuant to 42 U.S.C. § 1983 alleging unconstitutional conditions during his detention at the Vernon C. Bain Correctional Center. Plaintiff failed to appear for an Initial Pretrial Conference scheduled on August 5, 2021 before the Honorable Stewart D. Aaron, to whom this case has been referred for both general supervision of pretrial proceedings and for a Report and Recommendation on any dispositive motions. Dkt. 32. Judge Aaron scheduled another conference for September 15, 2021 at 11:00 a.m. and warned Plaintiff that failure to appear would result in a recommendation to the undersigned that this action be dismissed without prejudice for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b). *Id.* Plaintiff failed to appear for the September 15, 2021 conference at the scheduled time, but at approximately 11:30 a.m. dialed into Judge Aaron's conference line with the intent to participate in the conference. Dkt. 33. Judge Aaron informed Plaintiff that he would reschedule the conference for October 27, 2021 at 11:00 a.m., and again warned Plaintiff that failure to appear for that telephone conference may result in the imposition of sanctions up to and including a recommendation that Plaintiff's case be dismissed for failure to

prosecute. *Id.* Once again, Plaintiff did not appear for the October 27, 2021 conference. By Order dated November 3, 2021, Judge Aaron issued a Report and Recommendation, recommending that this action be dismissed without prejudice for failure to prosecute pursuant to Rule 41(b). Dkt. 34.

On November 22, 2021, after Plaintiff failed to file any objections to the Report and Recommendation and because the docket did not appear to reflect that the Report and Recommendation had been mailed to Plaintiff, the Court extended the deadline for Plaintiff to file any objections to the Report and Recommendation until December 9, 2021. Dkt. 35. The docket reflects that both the November 22, 2021 Order and the Report and Recommendation were mailed to Plaintiff and neither document was returned to the Court as undeliverable.

A district court “may accept, reject, or modify in whole or in part, the findings or recommendations made by the magistrate judge” in a Report and Recommendation. 28 U.S.C. § 636(b)(1)(C). If a party submits a timely objection to any part of the magistrate judge’s disposition, the district court will conduct a *de novo* review of the contested section. Fed. R. Civ. P. 72(b)(3); *see also United States v. Male Juvenile*, 121 F.3d 34, 38 (2d Cir. 1997). If no objections are made, the district court reviews a report and recommendation for clear error. *See, e.g., Wilds v. United Parcel Serv., Inc.*, 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003).

The Report and Recommendation, citing both Rule 72 of the Federal Rules of Civil Procedure and 28 U.S.C. § 636(b)(1), advised the parties that they had fourteen days from service of the Report and Recommendation to file any objections, and warned that failure to timely file such objections would result in waiver of any right to object. Dkt. 34 at 6. As noted above, the Court extended the deadline for Plaintiff to file his objections to the Report and Recommendation until December 9, 2021. Dkt. 35. No party filed any objections, and the time for making any objections has passed. The parties have therefore waived the right to object to the Report and

Recommendation or to obtain appellate review. *See Frank v. Johnson*, 968 F.2d 298, 300 (2d Cir. 1992); *see also Caidor v. Onondaga Cnty.*, 517 F.3d 601, 604 (2d Cir. 2008).

Notwithstanding this waiver, the Court has conducted a *de novo* review of the Report and Recommendation and finds it to be well reasoned and its conclusions well founded. Accordingly, the Court adopts the Report and Recommendation in its entirety. The Clerk of Court is respectfully directed to mail a copy of this Order to Plaintiff and close this case.

SO ORDERED.

Dated: December 15, 2021
New York, New York



JOHN P. CRONAN
United States District Judge